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A.No.739 of 2017
in C.S.No.859 of 2016
& A.No.5968 of 2016
& O.A.No.1022 of 2016

Reserved on: 12.04.2024

Pronounced on: 30.04.2024

P.B.BALAJI, J.,

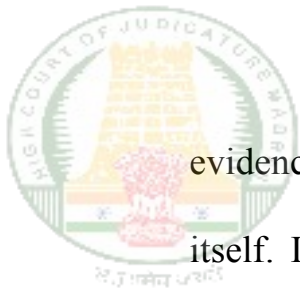
This is an application filed by the 2nd defendant seeking rejection of the plaint on the ground that the plaintiffs do not have any subsisting cause of action to pursue the suit.

2.In the application in support of the Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint, it is stated that the plaintiffs have filed the above suit seeking a permanent injunction and also mandatory injunction to demolish the construction put up in plaint 'B' Schedule of the property. The grounds, which are canvassed for rejection of the plaint, are that the plaintiffs are claiming under one P.C.Renugopal, who himself had filed a suit in O.S.No.9095 of 1984 on the file of the XVIII Assistant City Civil Court, Chennai, seeking a declaration in respect of the suit property comprised in S.No.28/1 in Ayanavaram Village measuring an extent of 0.18 cents. According to the applicant/2nd defendant, the said property is the suit property in the present suit. The suit in O.S.No. 9095 of



1984 was dismissed by the XVIII Assistant City Civil Court, Chennai, in and by a judgment dated 22.08.2002 and an appeal filed before the District Court in A.S.No.401 of 2003 was dismissed confirming the dismissal of the suit by the Trial Court. Thereafter, Second Appeal in S.A.No.137 of 2005 was preferred as against the said concurrent findings. However, the said Second Appeal also came to be dismissed by this Court on 20.09.2011. The plaintiffs' who claim right under the said P.C.Renugopal cannot get any better right than P.C.Renugopal himself and when the suit has been admittedly dismissed up to this Court in Second Appeal proceedings, the plaintiffs have no subsisting cause of action for seeking the relief of possession and injunctions as prayed for in the suit as against the defendants. The suit is also barred by principles of *res judicata* and besides does not disclose any cause of action.

3.The said application is resisted by the respondents/plaintiffs on the ground that similar applications were filed by other defendants 3 and 5 in O.A.No.536 of 2017 and O.A.No.920 of 2017 and the same were allowed to be dismissed for default. The learned counsel also contend that there is no relief against the 1st defendant in the present suit and the 2nd defendant is only an adjacent land owner and necessarily the parties have to lead



evidence and the plaintiffs remedy cannot be shut out at the nascent stage itself. It is also further contend that the earlier suit proceedings have no relevance to the present suit. He would therefore pray for dismissal of the application seeking rejection of the plaint.

4.I have gone through the plaint. The plaintiffs are claiming under one P.C.Renugopal who had originally purchased 0.18 cents of land comprised in S.No.28/1 in Ayanavaram Village. The 1st defendant/Perambur Co-operative Building Society Ltd., Chennai, owned the adjacent lands measuring 0.18 cents comprised in S.No.18/1. There was a dispute between the said P.C.Renugopal and Perambur Co-operative Building Society Ltd., Chennai which led to P.C.Renugopal filing a suit in O.S.No.8569 of 1972 before the City Civil Court, Chennai. The said suit was dismissed on 14.10.1976 and the same attained finality, P.C.Renugopal not preferring any appeal against the said judgment and decree.

5.It is seen that subsequently O.S.No.9095 of 1984 has been filed by the said P.C.Renugopal seeking declaration of title and also declaration that the decree in the earlier suit in O.S.No.8569 of 1972 was void. This suit was also preferred only against the Perambur Co-operative Building



Society, Chennai, namely the 1st defendant herein. The said suit came to be dismissed after elaborate trial and as already discussed, the First Appeal as well as Second Appeal preferred by said P.C.Renugopal also came to be dismissed. The plaintiffs are admittedly legal representatives of the said P.C.Renugopal and therefore, it is evident that they cannot get any better right than what P.C.Renugopal himself had.

6.It is the contention of the learned counsel for the applicant that the suit is without any cause of action since in the earlier suit proceedings, the title of said P.C.Renugopal himself has been negatived up to this Court in Second Appeal proceedings and therefore, when P.C.Renugopal himself had no title, his legal heirs cannot maintain a suit for recovery of possession.

7.Per contra, the learned counsel for the respondents/plaintiffs would submit that the plaintiffs had filed a writ petition before this Court in W.P.No.25545 of 2015 for identifying and measuring the suit property in S.No.28/1 and only at that point of time, the plaintiffs came to know that the defendants 2 to 5 have encroached portions of the property in S.No.28/1 and the said property has been separately described as Schedule 'B' in the plaint.



8.It is the further contention of the respondents/plaintiffs that the remaining area after factoring the encroachments made by the defendants 2 to 5 is only in the possession of the plaintiffs and therefore, they have instituted the suit for recovery of possession in respect of the trespassed portion and for injunction which cannot be set to be without any cause of action.

9.Admittedly, in the earlier proceedings, the said P.C.Renugopal has sought for declaration of his title in respect of 0.18 cents of lands comprised in S.No.28/1 in Ayanavaram Village. The said relief of declaration of title has been negated by concurrently by two Courts and also confirmed by this Court in S.A.No.137 of 2005.

10.On going through the plaint, I find that the plaintiffs have described the suit property in the manner following:

“Schedule - A:

All that piece and parcel of land situated within Registration District of Madras and Sub-Registration of Sembium, at No.70, Ayanpuram Village bearing Paimash No.578/2, present T.S.No.28/1 of 1970 in Block II of the extent of 0.18 cents in four boundaries, North by Duraisamy Iyengar's land, East by Narasimha



Chettiyar's land, South by M.S.M.Railway land and West by Erikarai measuring 3 grouds 627 sq.ft ad-measuring 51 feet at North, 50 feet at South, 154 feet at East and 156 feet at West as per the Schedule in Document No.1.

Schedule – B:

All that piece and parcel of land situate within Registration District of Madras and Sub-Registration of Sembium, at No.70, Ayanpuram Village bearing Paimash No.578/2, present T.S.No.28/1 of 1970 in Block II of the extent of 6510 sq.ft in four boundaries, North by Duraisamy Iyengar's land, East by Plaintiff's vacant land, South by Gandhi Street Road and West by the defendants encroached Poramboke land measuring 2.7125 grounds ad-measuring 42 feet at North, 42 feet at South, 154 feet at East and 156 feet at West.

(Amended as per order dated 16.08.2022 in A.No.6957 of 2019).

Schedule – C:

All that piece and parcel of land situate within Registration District of Madras and Sub-Registration of Sembium, at No.70, Ayanpuram Village bearing Paimash No.578/2, present T.S.No.28/1 of 1970 in Block II of the extent of 1317 sq.ft in four boundaries, Northy by Duraisamy Iyengar's land, East by Narasimha Chettiyar's land, presently the 1st defendant land, South by Gandhi Street Road and West by the Plaintiffs encroached by the defendants measuring 0.55 grounds



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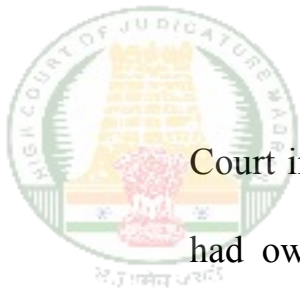


ad-measuring 9 feet at North, 8 feet at South, 154 feet at East and 156 feet at West.

(Amended as per order dated 16.08.2022 in A.No.6957 of 2019).

11. Along with the plaint, the plaintiffs have also filed the copies of the plaint in O.S.No.8569 of 1972 and O.S.No.9095 of 1984. The judgment and decree passed in O.S.No.9095 of 1984 and A.S.No.401 of 2003 against the decree in O.S.No.9095 of 1984 has also been filed as documents.

12. In the plaint in O.S.No.9095 of 1984, the suit property in the said suit is 18 cents comprised in TS.No.28/1 at Ayanavaram Village. From the judgments in the earlier suit proceedings in O.S.No.9095 of 1984, A.S.No.401 of 2003 and S.A.No.137 of 2005, it is seen that P.C.Renugopal had claimed declaration that he was the owner of 0.18 cents comprised in TS.No.28/1 at Ayanavaram Village. It was the case of the P.C.Renugopal that the Perambur Co-operative Building Society Limited, Chennai, owned lands only in T.S.No.18/1 and it is situate adjoining the land belonging to P.C.Renugopal. The said P.C.Renugopal was unsuccessful in getting his title declared in the earlier proceedings which have attained finality before this



Court in S.A.No.137 of 2005. This Court found that though P.C.Renugopal had ownership over 0.18 cents comprised in TS.No.28/1, the claim was disguised in respect of the T.S.No.18/1 belonging to the defendant/Society only and refused to declare the title of the said P.C.Renugopal to even the extent of 0.18 cents in S.No.28/1 which was admittedly purchased by the said P.C.Renugopal.

13.In fact, in the earlier suit, an Advocate Commissioner was appointed and he has also identified the property comprised in TS.No.28/1 which was purchased by the said P.C.Renugopal under whom the plaintiffs are presently claiming right and have filed the suit for recovery of possession. Even in the present suit, the very same extent of 0.18 cents has been described in Schedule 'A' with four boundaries, in Schedule 'B' the plaintiffs have described the property that has been encroached upon by the defendants 2 to 5, in Schedule 'B' the extent is shown as 6510 Sq.ft and it is stated to be bounded by four definite boundaries. Similarly, Schedule 'C' has also been described as an extent of 1317 Sq.ft with four boundaries.

14.The dispute in the earlier suit was with regard to a triangular portion of land lying to the East of TS.No.28/1 and comprised in



T.S.No.18/1 which belong to the Perambur Co-operative Building Society.

Even in the earlier proceedings, the lands comprise in T.S.No.28/1 had been identified by the Advocate Commissioner. Only finding that the claim was in respect of a portion which was not comprised in the said 0.18 cents comprised in TS.No.28/1, the suit came to be dismissed and the same was also confirmed by this Court in Second Appeal.

15.However, in the present suit, it is the specific case of the plaintiffs that after the death of said P.C.Regugopal, they got papers with regard to earlier cases and in order to identify their land and survey the same, they approached this Court by way of writ petition in W.P.No.25545 of 2015 and on 18.08.2015, the lands were surveyed and boundary stones were also fixed.

16.According to the plaintiffs, only at that time of the laying of the boundary stones, the plaintiffs came to know that the defendants 2, 3, 5, 6 to 9 had encroached into the plaintiffs' lands and have let out the same and they receiving rents from the tenants. It is also stated that the 2nd defendant is residing in one portion and let out the remaining portion for commercial purposes. It is also stated that by the plaintiffs that a complaint was lodged



by them to the Commissioner of Police, Land Grabbing Cell, and CrI.O.P.No.28023 of 2015 was also filed before this Court. However, pursuant to the directions of this Court, the 2nd plaintiff was directed to approach the appropriate Civil Court to get relief of recovery of possession of the property. On the strength of such allegations, the plaint has been filed.

17.In paragraph No.18, which is the cause of action paragraph, the plaintiffs clearly state that P.C.Renugopal, in 1972 tried to lay fence to his property, which was objected by the Perambur Co-operative Building Society Limited and therefore, the said P.C.Renugopal was constrained to file O.S.No.8569 of 1972 for permanent injunction to restrain the society from interfering with his peaceful possession and enjoyment of the suit property. However, the suit was admittedly dismissed and subsequently, the said P.C.Renugopal filed the second suit in O.S.No.9095 of 1984 where he prayed for declaration of his title to the suit property.

18.Admittedly, the said suit was dismissed and the First Appeal preferred against the decree for dismissal also came to be dismissed and recently the Second Appeal challenging the concurrent findings also came to be dismissed by this Court. I find that the property, which is the subject



matter of the suit in O.S.No.9095 of 1984 and the present suit namely, 0.18 cents comprised in S.No.28/1 is one and the same. At the same time, I find in the earlier suits that the title of P.C.Renugopal was never disputed. It was only an issue pertaining to a triangular portion of land which was situate to the East of S.No.28/1. According to said P.C.Renugopal, the said lands were forming part of S.No.28/1. However, it was the case of the Society that the said triangular portion fell in their entitlement comprised in T.S.No.18/1.

19.In such circumstances, the earlier proceedings, especially taking note of the fact that the 0.18 cents belonging to P.C.Renugopal in S.No.28/1 had been identified by the Advocate Commissioner, the said P.C.Renugopal could not claim any right over the triangular portion of land. Only in those circumstances, the suit filed by P.C.Renugopal came to be dismissed. In the said suit, the said P.C.Renugopal had not even specified the boundaries of S.No.28/1. Admittedly, the suit was filed only against the Society which is a formal party in the present suit.

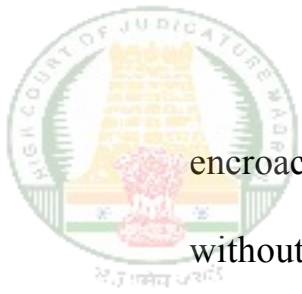
20.In the present suit, the specific case of the plaintiffs is that the defendants 2, 3, 5, 6 to 9 have encroached into the lands measuring 0.18 cents comprised in S.No.28/1 which is admittedly belonging to



P.C.Renugopal. There was no dispute with regard to this issue even in the earlier proceedings. In Schedule 'B', the plaintiffs have carved out the extent alleged to have been encroached by the defendants. Specific boundaries are also mentioned and one of the boundaries, namely the Eastern boundary is said to be the plaintiffs' vacant land, that is the lands which are not encroached and continue to be in the plaintiffs' possession and enjoyment.

21.It is the case of the plaintiffs in the present suit that the defendants have encroached only into their entitlement of 0.18 cents in S.No.28/1. The present suit does not pertain to the triangular portion of land which was the bone of contention in the earlier suit proceedings. Therefore, without the parties leading evidence, it is not possible for the Courts to nip the litigation in the bud and state that there is no cause of action for the plaintiffs to continue the present suit, in view of the dismissal of the S.A.No.137 of 2005 confirming the judgment and decree of the Courts, which was only a dispute between the plaintiffs' predecessor in interest and title and the 1st defendant.

22.Moreover, as seen from the Schedule, it is clear that the plaintiffs allege specific portions of their property is said to have been



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encroached into by the specific defendants and in such circumstances, without trial of the suit and the parties leading oral and documentary evidence, it cannot be summarily decided that the property which is subject matter of the present suit was substantially the very same property which is subject matter of the earlier suit proceedings. The reason for this conclusion is that in the earlier suit, the plaintiffs' predecessor in title P.C.Renugopal had not even described the 0.18 cents comprised in S.No.28/1 by four definite boundaries. However, in the present suit he has specifically shown four boundaries for the said 0.18 cents in S.No.28/1. Even in the earlier suit proceedings, the Courts found that the said P.C.Renugopal was entitled to an extent of 0.18 cents in S.No.28/1 and the same was also identified by the Advocate Commissioner in the said proceedings. Therefore, the entitlement of P.C.Renugopal to 0.18 cents in S.No.28/1 was actually upheld in the earlier proceedings. In such circumstances, the parties have to necessarily lead evidence and only thereafter, the entitlement of the plaintiffs to the relief sought for can be decided and it cannot be said that there is no cause of action surviving or subsisting to the plaintiffs at this stage. Therefore, I do not find any justifying grounds to entertain the application for rejection of the plaint.



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23.The learned counsel for the applicant/2nd defendant relied on the following decisions:

1. (2020) 16 SCC 601 (Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Legal Representatives).

2.(2017) 13 SCC 174 (Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal).

3.2023 SCC Online 521 (Ramisetty Venkatanna and Another Vs. Nasyam Jamal Saheb and Others).

24.The learned counsel for the respondents/plaintiffs relied on the following decisions:

1.(2021) 9 SCC 99 (Srihari Hanumandas Totala Vs.Hemant Vithal Kamat and Others.

2.(2019) 13 SCC 372 (Urvashiben and Another Vs. Krishnakant Manuprasad Trivedi).

3.2010 (5) CTC 318 (Nakkheeran Publications, rep. by its Editor, Royapettah, Chennai – 600 014 and Another Vs. Dhyanapeeta Charitable Trust, rep by its Trustee, Sri Nithya Sadhanandha @ T.T.Dhanasekar).

4.2009 (5) CTC 837 (Dega Jayalakshmi and Others Vs. Kapoor Enterprises, rep by its. Managing Partner, R.M.Lakshman Dass and Others).



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**5.2015 (2) CTC 67 (Kolli Venkata Mohan
Rao and Another Vs. J.M.Patricia and Others).**

25.In *Raghwendra Sharan Singh's* case, the Hon'ble Supreme Court held that if on a meaningful and not formal reading of the entire plaint, it is found that the plaintiff does not disclose a cause of action or if the relief is found to be bound by law of limitation and consequently, vexatious and meritless, then the plaint has to be necessarily rejected invoking Order VII Rule 11 of the Code of Civil Procedure.

26.In *Madanuri Sri Rama Chandra Murthy's* case, the Hon'ble Supreme Court held that the power available under Rule 11 can be exercised and the plaint can be rejected if the suit is found to be barred by law and vexatious and meritless. However, the Hon'ble Supreme Court held that it was always depend on the facts and circumstances of each case.

27.In *Ramisetty Venkatanna's* case, the Hon'ble Supreme Court held that if the cause of action is illusory and barred by limitation and only by clever drafting, the plaintiffs have tried to circumvent the provisions of Limitation Act and tried to maintain the suit, then the suit is abuse of process of Court and law liable to be rejected invoking power under Order VII Rule 11 of CPC.



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28.In ***Srihari Hanumandas Totala's*** case, the Hon'ble Supreme Court held that the applicability of bar of *res judicata* cannot be determined at the stage of rejection of the plaint and can only be determined upon the trial of the suit.

29.In ***Urvashiben's*** case, the Hon'ble Supreme Court held that question of limitation was a mixed question of fact and law and therefore, the merits and demerits of the case raised by the parties are to be adjudicated only at trial.

30.A Division Bench of this Court in ***Nakkheeran Publications, rep. by its Editor, Royapettah, Chennai – 600 014's*** case, held that issues of *res judicata* and cause of action can be decided only at the time of trial and upheld the order of the learned Single Judge dismissing the application rejection of the plaint, the same is not requiring any interference.

31.In ***Dega Jayalakshmi's*** case, the learned Single Judge of this Court held that the issue relating to the limitation involved is a mixed question of law and fact and adjudication of such issues involving



appreciation of pleadings and evidence cannot be a ground for rejection of the plaint.

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32.In *Kolli Venkata Mohan Rao's* case, this Court held that the issue of title was a mixed question of law and fact and mere denial of title would not warrant rejection of plaint.

33.Keeping the principles enunciated by the Hon'ble Supreme Court as well as this Court in mind and applying the same to the facts of the present case, as held by the Hon'ble Supreme Court, an application for rejection of plaint has to be decided purely on the facts and circumstances of each case.

34.Here, admittedly, the defendants 2, 3, 5, 6 to 9 are not claiming under the 1st defendant since they are persons in possession of adjoining properties. The *lis* in the earlier suit was only between the plaintiffs' predecessor in title, P.C.Renugopal and the 1st defendant/Society. In such circumstances, when the plaintiffs have approached the Court with a specific case is that the defendants have encroached into the suit property belonging to P.C.Renugopal under whom the plaintiffs claim title, the said



issue has to be necessarily tried and the parties would have to necessarily adduce oral and documentary evidence in support of their respective contentions. Only thereafter, the Courts will be in a position to decide whether the defendants have actually encroached into the plaintiffs property or not. I also do not find that the issue in the earlier suit proceedings would bar the present suit or estop the plaintiffs from seeking relief of possession as against the contesting defendants who are not admittedly parties to the earlier suit proceedings. However, it shall be open to the contesting defendants to raise all defences open to them including limitation, at the time of trial and arguments thereafter.

35. In fine, this application to rejection of the plaint is dismissed.

30.04.2024

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P.B.BALAJI, J.
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